

REMARKS

Entry of the foregoing, reexamination and reconsideration of the above-identified application are respectfully requested.

Status

On January 26, 2004, Applicants filed an Amendment and Reply After Final Rejection seeking to amend several pending claims. As a precaution, Applicants also filed a Notice of Appeal on that day. On March 16, 2004, an Advisory Action was mailed indicating that the proposed amendments would NOT be entered. See *Advisory Action mailed March 16, 2004, Items 5 and 7*.

Discussions with Examiner Kallis

Following receipt of the Advisory Action, the undersigned phoned Examiner Kallis regarding the Advisory Action and the case generally. During those discussions, certain information contained within the application, as elaborated upon below, was revisited. As a result, Examiner Kallis indicated that Applicants should receive patent protection regarding SEQ ID NOs 1, 2, and 3. Because amending the claims as they then stood would require an elaborate Examiner's Amendment, Examiner Kallis requested that this Supplemental Amendment and Reply be filed.

Summary of Amendments

By the foregoing amendments, Applicants have cancelled Claims 1-22 without prejudice or disclaimer to Applicants filing one or more continuing applications directed to the subject matter contained therein.

Also by the foregoing amendments, Applicants have added "new" Claims 23-35. Claims 23-26 pertain to SEQ ID NO:1; Claims 27-30 pertain to SEQ ID NO:2, Claims 31-34 pertain to SEQ ID NO:3; and Claim 35 is a method claim directed to SEQ ID NOs 1, 2, and 3.

Support for Claims 23-26 may be found throughout the Specification and at least at original Claim 1, original Claims 6-8, and Figure 6 (including the description thereof). Support for Claims 27-30 may be found throughout the Specification and at least at original Claim 2, original Claims 6-8, and Figure 6 (including the description thereof). Support for Claims 31-34 may be found throughout the Specification and at least at original Claim 3, original Claims 6-8, and Figure 6 (including the description thereof). Support for Claim 35 may be found throughout the Specification and at least at original Claim 9.

Accordingly, no new matter has been added by the addition of Claims 23-35.

Priority Documents

In accordance with Examiner Kallis' request, on April 2, 2004, Applicants filed at the U.S. Patent and Trademark Office: (1) a certified copy of Japanese Priority Application No. 2000-179826, filed June 15, 2000; and (2) a sworn translation of Japanese Priority Application No. 2000-179826, filed June 15, 2000.

Drawings

Applicants note that the Advisory Action contains an indication that the drawings filed June 14, 2001, are not approved by the Examiner. Applicants will amend Figure 4 to increase the font size of the text contained therein.

Discussion of New Claims 23-35**SEQ ID NO:1**

In response to the restriction requirement mailed October 3, 2002, Applicants elected, with traverse, Group I. Group I pertained to Claims 1, 12, 15, 18, and 21 "drawn to a promoter, transgenic plants, transgenic seeds, and a method of activating endogenous or exogenous gene expression in a plant" using SEQ ID NO:1. *See Official Action mailed October 3, 2002; see also Applicants Response to Requirement for Restriction filed November 4, 2002.*

SEQ ID NOs 2 and 3

SEQ ID NO:1 represents nucleotides -3359 to -1 of a promoter of phyto-sulfokine precursor derived from rice. *See, e.g., Application, Paragraphs 0001 and 0006.* As discussed with Examiner Kallis, SEQ ID NO:2 represents nucleotides -1911 to -1 of said promoter and SEQ ID NO:3 represents nucleotides -1034 to -1 of said promoter. *See, e.g., Application, Paragraphs 0001 and 0007-0008.*

Overlap in SEQ ID NOs 1, 2, and 3

During the discussions with Examiner Kallis, the overlap between SEQ ID NOs 1, 2, and 3 was discussed. Examiner Kallis indicated that Applicants should file claims directed to each of these sequences and that said sequences should be rejoined. New Claims 23-35 satisfy Examiner Kallis' request.

Figure 6

Figure 6 "is a graph showing GUS activity of transformed rice Oc cells transformed with *OsPSK*-intron-GUS constructs." *See Application, Paragraph 0013, Page 5.* As explained in the Application, "[t]he sequence incorporated into [plasmid] pIG121-6 corresponds to the region represented by base numbers from -3359 to -1." *See Application, Paragraph 0031.* "The sequence incorporated into [plasmid] pIG121-4 corresponds to the region represented by base numbers from -1911 to -1." *See Application, Paragraph 0031.* "The sequence incorporated into [plasmid] pIG121-3 corresponds to the region represented by base numbers from -1034 to -1." *See Application, Paragraph 0031.*

The data reflected in Figure 6 compares the assayed GUS activity of pIG121 (the original pIG121 containing the CaMV 35S promoter) with the assayed GUS activity of, *inter alia*, pIG121-3, pIG121-4, and pIG121-6. *See Application, Paragraphs 0040-0043.* As noted by Examiner Kallis, pIG121-3, pIG121-4, and pIG121-6 exhibited more GUS activity than did pIG121.

As a result, Examiner Kallis agreed that pIG121-6, pIG121-4, and pIG121-3, corresponding, respectively, to SEQ ID NOs 1-3, represent patentable subject matter.

Former Rejections Under 35 U.S.C. §§ 102, 103, and 112

Applicants believe that new Claims 23-35 are free from the former rejections under 35 U.S.C. §§ 102, 103, and 112. Specifically, Applicants believe that submission of a certified copy of Japanese Priority Application No. 2000-179826, filed June 15, 2000; and a sworn translation thereof have perfected Applicants'

effective filing date of June 15, 2000. As a result, the publication that formed the basis of both the § 102 and § 103 rejections, Yang (GenBank Accession Number AB026837, published December 19, 2000), may not be relied upon. Regarding the former § 112 rejections, Applicants believe new Claims 23-35 do not contain the text that formed the basis of said rejections.

Accordingly, Applicants respectfully request allowance of new Claims 23-35.

CONCLUSION

It is respectfully submitted that all rejections have been overcome by the above amendments. Thus, a Notice of Allowance is respectfully requested.

Applicants and the undersigned note with appreciation Examiner Kallis' willingness to expedite prosecution in this matter. In the event that there are any remaining questions relating to this amendment or the application in general, it would be appreciated if the Examiner would contact the undersigned attorney by telephone at (703) 838-6526 so that prosecution of the application may be expedited.

Respectfully submitted,
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